

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Respondent/Plaintiff,

vs.

ERIC TYRONE JACKSON,

Petitioner/Defendant.

Case No.: 2:11-cr-00442-GMN-GWF-1

ORDER

Pending before the Court is Petitioner Eric Tyrone Jackson's ("Petitioner") Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255 ("2255 Motion"), (ECF Nos. 268, 286). The Government filed a Response, (ECF No. 293), and Petitioner filed a Reply, (ECF No. 295). For the reasons discussed below, Petitioner's 2255 Motion is **DENIED**.

I. BACKGROUND

On November 5, 2012, Petitioner pleaded guilty to Counts 3 and 4 of the Superseding Indictment: Armed Bank Robbery under 18 U.S.C. § 2113(a) and (d); and Using and Carrying a Firearm under 18 U.S.C. § 924(c). (Mins. Proceedings, ECF No. 68); (J., ECF No. 100). The Court sentenced Petitioner to 20 months' custody for Count 3, and 84 months' custody for Count 4, to run consecutively to one another, for a total of 104 months. (J., ECF No. 100).

On June 24, 2016, Petitioner filed an Abridged 2255 Motion, (ECF No. 268), followed by a comprehensive 2255 Motion, (ECF No. 286), on December 15, 2016, requesting relief based on the U.S. Supreme Court's decision in *Johnson v. United States*, 135 S. Ct. 2551, 2557 (2015).

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1 **II. LEGAL STANDARD**

2 Under 28 U.S.C. § 2255, a petitioner may file a motion requesting the Court which
3 imposed sentence to vacate, set aside, or correct the sentence. 28 U.S.C. § 2255(a). Such a
4 motion may be brought on the following grounds: “(1) the sentence was imposed in violation of
5 the Constitution or laws of the United States; (2) the court was without jurisdiction to impose
6 the sentence; (3) the sentence was in excess of the maximum authorized by law; or (4) the
7 sentence is otherwise subject to collateral attack.” *Id.*; see *United States v. Berry*, 624 F.3d
8 1031, 1038 (9th Cir. 2010). When a petitioner seeks relief pursuant to a right newly recognized
9 by a decision of the United States Supreme Court, a one-year statute of limitations applies.
10 28 U.S.C. § 2255(f)(3). That one-year limitation begins to run from “the date on which the
11 right asserted was initially recognized by the Supreme Court.” *Id.* § 2255(f)(3).

12 **III. DISCUSSION**

13 Petitioner argues that his sentence for Count 4 of the Superseding Indictment for Using
14 and Carrying a Firearm arose under an unconstitutionally vague provision of 18 U.S.C.
15 § 924(c). (2255 Motion at 3:2–8, ECF No. 286). Title 18 United States Code Section 924(c)
16 criminalizes the use or carrying of a firearm in relation to a “crime of violence,” and it imposes
17 mandatory minimum sentences that must run consecutive to any other sentence. An offense
18 may qualify as a crime of violence under § 924(c) through either of two clauses: § 924(c)(3)(A)
19 or § 924(c)(3)(B). Section 924(c)(3)(A), also known as the statute’s “force clause,” applies if
20 an individual is convicted of a predicate crime that “has as an element the use, attempted use, or
21 threatened use of physical force against the person or property of another.” By contrast,
22 § 924(c)(3)(B), known as the “residual clause” of the statute, is much broader; it applies if the
23 individual is convicted of any predicate felony offense “that by its nature, involves a substantial
24 risk that physical force against the person or property of another may be used in the course of
25 committing the offense.” The U.S. Supreme Court recently invalidated § 924(c)(3)(B) after

1 holding that its language is unconstitutionally vague. *See United States v. Davis*, 139 S. Ct.
2 2319, 2335–36 (2019). However, the force clause, § 924(c)(3)(A), has not been deemed
3 unconstitutional.

4 Here, Petitioner argues that his sentence based on Count 4 of the Indictment violates due
5 process because the Court imposed it under the unconstitutionally vague residual clause, 18
6 U.S.C. § 924(c)(3)(B). (*See* 2255 Motion 7:18–8:8). To make that argument, Petitioner points
7 to his predicate offense of Armed Bank Robbery in violation of 18 U.S.C. § 2113. (*Id.* 13:1–
8 19:16). He claims that Armed Bank Robbery is not a crime of violence by its elements, and
9 thus his sentence enhancement for that predicate crime under Section 924(c) must have arisen
10 from the unconstitutional residual clause. (*See id.* 19:12–16). The Ninth Circuit in *United*
11 *States v. Watson*, 881 F.3d 782 (9th Cir.), *cert. denied*, 139 S. Ct. 203 (2018), rejected the same
12 arguments made by Petitioner when it held that federal armed bank robbery constitutes a crime
13 of violence by its elements. 881 F.3d at 786. Petitioner’s conviction for Armed Bank Robbery
14 therefore implicates the force clause, 18 U.S.C. § 924(c)(3)(A), not the unconstitutional
15 residual clause—rendering Petitioner ineligible for relief on the grounds argued in his 2255
16 Motion. Accordingly, the Court will deny Petitioner’s 2255 Motion, (ECF Nos. 268, 286).

17 To proceed with an appeal of this Order, Petitioner must receive a certificate of
18 appealability from the Court. 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22; 9th Cir. R. 22-1;
19 *Allen v. Ornoski*, 435 F.3d 946, 950–51 (9th Cir. 2006); *see also United States v. Mikels*, 236
20 F.3d 550, 551–52 (9th Cir. 2001). This means that Petitioner must make “a substantial showing
21 of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S.
22 473, 483–84 (2000). He bears the burden of demonstrating that the issues are debatable among
23 jurists of reason; that a court could resolve the issues differently; or that the questions are
24 adequate to deserve encouragement to proceed further. *Slack*, 529 U.S. at 483–84.

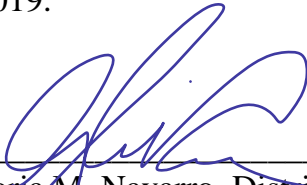
1 The Court has considered the issues raised by Petitioner with respect to whether they
2 satisfy the standard for issuance of a certificate of appealability, and determines that the issues
3 do not meet that standard. The Court will therefore deny Petitioner a certificate of
4 appealability.

5 **IV. CONCLUSION**

6 **IT IS HEREBY ORDERED** that Petitioner's Motion to Vacate, Set Aside, or Correct
7 Sentence Pursuant to 28 U.S.C. § 2255, (ECF Nos. 268, 286), is **DENIED**.

8 **IT IS FURTHER ORDERED** that a Certificate of Appealability is **DENIED**.

9 **DATED** this 18 day of September, 2019.

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13 Gloria M. Navarro, District Judge
14 United States District Court
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